

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

SARAH UPDIKE, et al.	:	Case No. 1:22-cv-00374
Plaintiffs,	:	Judge Michael R. Barrett
v.	:	
SARA JONAS, et al.	:	<u>PLAINTIFFS' MOTION FOR AN</u>
Defendants.	:	<u>EXTENSION OF TIME TO RESPOND</u>
	:	<u>TO DEFENDANTS' MOTION TO</u>
	:	<u>DISMISS PLAINTIFFS' FIRST</u>
	:	<u>AMENDED COMPLAINT</u>
	:	

Plaintiffs have filed a Motion for Leave to File Second Amended Complaint (“Motion for Leave”) on this date. If granted, Plaintiffs’ Second Amended Complaint will become the operative pleading, and will moot the pending Motion to Dismiss Plaintiffs’ First Amended Complaint filed by Defendants (Doc. 29). As such, Plaintiffs respectfully move for an extension of time to respond to Defendants’ Motion to Dismiss the First Amended Complaint while the Court considers Plaintiffs’ Motion for Leave.¹ If the Court grants Plaintiffs’ Motion for Leave, Defendants’ Motion to Dismiss First Amended Complaint will be moot and no response will be necessary. If the Court denies Plaintiffs’ Motion for Leave, Plaintiffs respectfully request seven (7) days following entry of such denial order to file their response to Defendants’ Motion to Dismiss First Amended Complaint. A memorandum in support follows.

¹ Prior to filing this Motion, counsel for Plaintiffs requested consent from Defendants to file a Second Amended Complaint. Counsel for Defendant Dr. Leslie Rasmussen indicated he was unable to determine whether he could consent until he reviewed the proposed Second Amended Complaint with his client. Counsel for the remaining Defendants have indicated they do not consent to the filing of a Second Amended Complaint.

Dated: February 10, 2023

Respectfully submitted,

s/ Nicole M. Lundrigan

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MEMORANDUM IN SUPPORT

Plaintiffs filed their First Amended Complaint on September 14, 2022 (Doc. 26). On October 12, 2022, Defendants filed their Motion to Dismiss Plaintiffs' First Amended Complaint (Doc. 29), made pursuant to Civil Rules 12(b)(6) and 12(b)(1). Defendants' primary argument is Plaintiffs lack standing to pursue the claims alleged in the lawsuit. Defendants have asked the Court to look to matters outside of the pleadings -- namely the Affidavit of Larry Hook with numerous exhibits filed by Defendants with their Motion to Dismiss -- in rendering a decision on their Motion to Dismiss (Doc. 25).

Following Defendants' filing of their Motion to Dismiss First Amended Complaint, Plaintiffs requested discovery on issues relating to Defendants' standing arguments, to which the Court indicated Plaintiffs were entitled. Three depositions were requested by Plaintiffs (Larry

Hook, Leslie Rasmussen, and Sara Jonas), and these depositions were taken on November 17, December 14 and December 21, 2022. Plaintiffs seek to include information obtained during these depositions in their proposed Second Amended Complaint.

In addition, since the filing of Plaintiffs' First Amended Complaint, Defendants have taken additional actions to enforce the Resolution and Plaintiffs have discovered other previously unknown actions taken by Defendants to enforce the Resolution. Upon information and belief, including based upon a review of the public records request log of FHSD, Defendants' actions to enforce the Resolution are continuing to date despite the Stipulation entered in this case. Plaintiffs seek to include this additional information in the proposed Second Amended Complaint.

The additional allegations made in the proposed Second Amended Complaint are directly relevant to the merits of this action, and are especially relevant to Plaintiffs' standing to pursue their claims in this action which is being challenged by Defendants with their Motion to Dismiss. Plaintiffs have cited caselaw in their Motion for Leave demonstrating the relevance of the additional allegations to the standing analysis.

If the Court grants Plaintiffs' Motion for Leave, the Second Amended Complaint will become the operative pleading and Defendants' Motion to Dismiss First Amended Complaint will be moot.² As such, Plaintiffs respectfully submit it is more efficient to await the Court's decision on the Motion for Leave which may moot the pending Motion to Dismiss, rather than to brief the Motion to Dismiss the First Amended Complaint which is a pleading that may become inoperative by virtue of the Second Amended Complaint. Plaintiffs therefore request an extension of time to respond to the pending Motion to Dismiss First Amended Complaint until the Court makes a decision regarding the pending Motion for Leave.

² Plaintiffs also respectfully submit that Defendants may not seek to dismiss the Second Amended Complaint once filed as it is clear based upon the caselaw cited by Plaintiffs that they have standing to pursue the claims alleged.

If the Court denies Plaintiffs' Motion for Leave to file a Second Amended Complaint, Plaintiffs respectfully request that they be provided seven (7) days following the Court's decision to file their Memorandum in Opposition to Defendants' Motion to Dismiss First Amended Complaint.

Dated: February 10, 2023

Respectfully submitted,

s/ Nicole M. Lundrigan

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was filed electronically with the Court's CM/ECF electronic filing services and served upon all parties of record on the 10th day of February, 2023.

s/ Nicole M. Lundrigan